

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS

TYLER DIVISION

JODY McCREARY, #1142309

§

VS.

§

CIVIL ACTION NO. 6:06cv167

DIRECTOR, TDCJ-CID

§

ORDER OF DISMISSAL

The above-entitled and numbered civil action was heretofore referred to United States Magistrate Judge John D. Love, who issued a Report and Recommendation concluding that the petition for a writ of habeas corpus should be dismissed as time-barred. The Petitioner has filed objections.


The Report and Recommendation of the Magistrate Judge, which contain his proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration, and having made a *de novo* review of the objections raised by the Petitioner, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct. In his objections, the Petitioner argued that the petition should not be dismissed as time-barred because the indictment was defective. The Fifth Circuit, however, has enforced the one year statute of limitations even though a petitioner alleged the indictment was defective. *Scott v. Johnson*, 227 F.3d 260 (5th Cir. 2000). Thus the Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court. It is accordingly

**ORDERED** that the petition for a writ of habeas corpus is **DENIED** and the case is **DISMISSED** with prejudice. It is further

**ORDERED** that all motions not previously ruled on are hereby **DENIED**. It is finally

**ORDERED** that a certificate of appealability is **DENIED**.

**SIGNED** this 15th day of May, 2006.



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MICHAEL H. SCHNEIDER  
UNITED STATES DISTRICT JUDGE